

50

IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF ILLINOIS

RECEIVED

AUG 24 2009

CLERK, U.S. DISTRICT COURT
 SOUTHERN DISTRICT OF ILLINOIS
 EAST ST. LOUIS OFFICE

DALE PRESNELL and LORI PRESNELL,)

Plaintiffs,)

v.)

COTTRELL, INC. and UNITED ROAD
 SERVICES, INC.,)

Defendants.)

Case No. 09-656-SP6

(Removed from the Circuit Court
 of the Twentieth Judicial Circuit,
 St. Clair County, State of Illinois,
 Case No. 09-L-388)

NOTICE OF REMOVAL OF CIVIL ACTION

COMES NOW COTTRELL, INC., ("Cottrell"), by and through its attorneys, BRYAN CAVE LLP, and for its Notice of Removal of Civil Action pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, states as follows:

Short and Plain Statement of Grounds for Removal

I. Background and Parties

1. Cottrell is a defendant in this civil action, originally filed on July 21, 2009, in the Circuit Court of the Twentieth Judicial Circuit, St. Clair County, Illinois. Plaintiffs seek damages arising out of an alleged accident involving Mr. Presnell. The alleged accident purportedly involved a trailer which Plaintiffs claim was manufactured by Cottrell.

2. Plaintiffs are citizens of Tennessee.

3. Cottrell is a citizen of Georgia, incorporated under the laws of the State of Georgia and having its principal place of business in Georgia.

4. Defendant United Road Services, Inc. is a citizen of Delaware and Michigan, incorporated under the laws of the State of Delaware and having its principal place of business in Michigan.

II. Basis for Removal

5. Complete diversity exists in this case.

6. The amount in controversy of Dale Presnell's claims exceeds the sum or value of \$75,000, exclusive of interest and costs. He has alleged continuing injuries: "plaintiff. . . sustained severe and permanent injuries. . . Plaintiff has suffered and will continue to suffer pain and mental anguish; plaintiff's injuries are to his back, head and related areas. Plaintiff's injuries are disfiguring and are permanent in nature; plaintiff has been required to expend large sums of money in order to obtain medical treatment for his injuries and will be required to expend additional sums in the future; plaintiff has had pain and suffering in the past and is reasonably certain to experience pain and suffering in the future; plaintiff has sustained wage loss and has been damaged in his capacity to earn wages in the future; plaintiff's condition is such that he may be forced to expend sums of money for vocational rehabilitation and/or convalescent care." See Count I, ¶ 16. In addition, the Complaint seeks "in excess of \$50,000" in compensatory damages and "in excess of \$50,000" in punitive damages. See Count IV, last paragraph.

7. Under 28 U.S.C. § 1367(a), Lori Presnell's claims for loss of consortium damages may be properly joined under supplemental jurisdiction because her claims form part of the same case or controversy. Any exceptions to 28 U.S.C. § 1367(a) do not apply. Accordingly, the consortium claim may be joined even if it is not in excess of \$75,000, exclusive of interest and costs.

III. Conclusion

8. This action is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. §1332.

9. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b) in that Cottrell received service of this Complaint on August 6, 2009 and this notice is filed within 30 days thereafter. This action is not more than one year old.

10. Pursuant to 28 U.S.C. § 1446(d), promptly after filing this Notice of Removal, Cottrell will give written notice thereof to the Plaintiffs and will file a copy of its Notice of Removal with the Circuit Court of St. Clair County, State of Illinois.

11. Pursuant to 28 U.S.C. § 1446(a) and Local Filing Instruction 2.06.00, copies of the summons and complaint, constituting all the process and pleadings in possession of Cottrell in the state court action, and a copy of any pending pleadings or motions needing court action, are contained in the state court file, attached as Exhibit A.

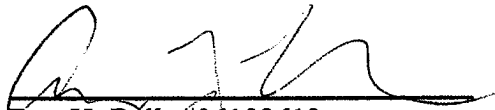
12. The written consent of defendant United Road Services, Inc. is attached as Exhibit B.

13. Cottrell hereby demands a trial by jury.

WHEREFORE, Cottrell requests that this action be removed from the Circuit Court of St. Clair County, State of Illinois to the Southern District of Illinois, for all purposes.

Respectfully submitted:

BRYAN CAVE LLP



Dan H. Ball, #06192613

Daniel J. Carpenter, #06186922

Amy Lorenz-Moser, #162866

211 N. Broadway, Suite 3600

St. Louis, MO 63102

Telephone: (314) 259-2000

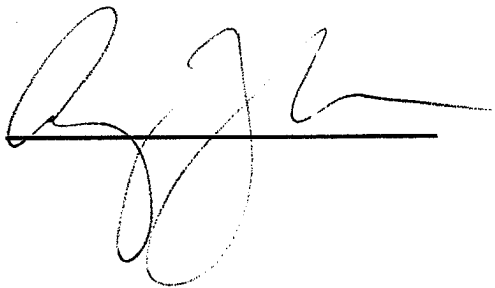
Facsimile: (314) 259-2020

Attorneys for Defendant
Cottrell, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of August, 2009, a copy of the foregoing was electronically filed with the Court, and will be sent electronically by the Court to the following:

Thomas G. Maag
Brian Wendler
Wendler Law, P.C.
900 Hillsboro, Suite 10
Edwardsville, IL 62025

A handwritten signature in black ink, appearing to be "BW", is written over a horizontal line.

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

DALE PRESNELL and LORI PRESNELL

(b) County of Residence of First Listed Plaintiff Tennessee

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Brian M. Wendler, Wendler Law PC, 900 Hillsboro, Ste. 10, Edwardsville, IL 62025

DEFENDANTS

COTTRELL, INC.

County of Residence of First Listed Defendant Georgia

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Amy Lorenz-Moser, Bryan Cave, LLP, 211 N. Broadway, Ste. 3600, St. Louis, MO 63102

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORT	FOREIGN MATTER	PROPERTY RIGHTS	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332, 1441, 1446

Brief description of cause:
Product liability action involving a car-hauling trailer

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

IN THE CIRCUIT COURT OF
FOR THE 20TH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

DALE PRESNELL and
LORI PRESNELL,

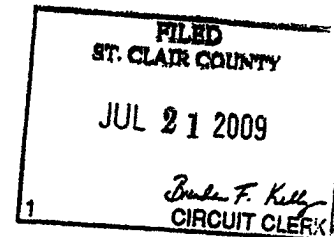
Plaintiffs,

vs.

COTTRELL, INC. and
UNITED ROAD SERVICES, INC.

Defendants.

Case No. 09L388



COMPLAINT

Allegations Common To All Counts

1. That the defendant, Cottrell, Inc. ("Cottrell") is a corporation organized and existing under the laws of the State of Georgia with its principal place of business located in the City of Gainesville, and doing business in the State of Illinois. Cottrell regularly does business in St. Clair County, Illinois. On all dates herein it is believed plaintiff was using a Cottrell rig which can be verified and/or further identification and information can be supplied by URS Midwest, Inc., plaintiff's employer. Plaintiff was hired in Illinois.
2. That the plaintiff, Lori Presnell, at all times relevant hereto was the spouse of Dale Presnell and in that capacity was dependent upon him for her support and services.
3. That plaintiff was an employee of URS Midwest, Inc., a Delaware corporation which has an office and terminal located in Centerville, St. Clair County, Illinois. Plaintiff was hired to work at said terminal.
4. That the rig in question is believed to be a model C-11 HLS manufactured in 2008 with fleet number 9319.

Exhibit A

5. That, United Road Services, Inc. ("United") is an Illinois corporation which regularly transacts business, has offices in and operates in Illinois including this County. This defendant through its officers and/or directors knew of the hazards and defects herein prior to plaintiff's injury.

6. That United is a separate corporation from URS Midwest, Inc. Neither plaintiff has ever been an employee of United.

COUNT I

COMES NOW the plaintiff, Dale Presnell, by and through his undersigned attorneys, and for his cause of action against the defendant, Cottrell, states as follows:

7. At all times relevant, plaintiff Dale Presnell ("Michael") was using a trailer and headrack manufactured by Cottrell which company placed said trailer and headrack into the stream of commerce for profit and for use in interstate transportation including in Illinois.

8. That on or about December 18, 2009, plaintiff, Dale Presnell, was performing his normal work duties as a car hauler.

9. At that time and place, plaintiff was operating the aforesaid truck, trailer with head rack ("rig") believed to have been manufactured and designed by the defendant, Cottrell. Pursuant to his duties, plaintiff was injured while maneuvering on the upper deck of the rig while in the performance of his duties.

10. That at all times relevant herein, the aforesaid rig was in substantially the same condition as when the rig left the control of defendant. Any modifications or alternations did not result in a substantial change or, alternatively, were foreseeable or expected.

11. That defendant placed the aforesaid rig into the stream of commerce as part of its regular business activity for ultimate use in this State.

12. At all times relevant, the trailer and headrack were manufactured and designed in such a fashion and manner that is was not reasonably safe for its intended use, in one or more of the following respects:

- (a) the rig was not equipped with a reasonably safe ladders, footing, walkways, traction and/or hand holds;
- (b) the warning(s) posted on the truck, if existent, failed to sufficiently warn plaintiff and others similarly situated of one or more of the above defects;
- (c) the instructions supplied with the truck, if existent, failed to sufficiently warn plaintiff and others similarly situated of the defective and/or unreasonably dangerous nature of the rig;
- (d) the rig was lacking a deck to stand, walk or maneuver on;
- (e) the rig was supplied with handrails which were not coupled with prohibitions against removal.

13. At all times relevant, Cottrell had a duty to manufacture a rig, in such a fashion, as to be reasonably safe for its intended use.

14. In violation of its duty, Cottrell acted as heretofore alleged.

15. Venue is proper in St. Clair County, as some part of the transaction took place in St. Clair County, the truck was introduced into commerce in St. Clair County, and defendants do business in St. Clair County, Illinois.

16. That as a direct and proximate result of the aforesaid, plaintiff, while attempting to maneuver on the upper deck of the rig in the course of his duties as a truck driver, sustained severe and permanent injuries when he fell from the top of the rig. Plaintiff has suffered and will continue to suffer pain and mental anguish; plaintiff's injuries are to his back, head and related areas. Plaintiff's injuries are disfiguring and are permanent in nature; plaintiff has been required to expend large sums of money in order to obtain medical treatment for his injuries and will be required to expend additional sums in the future; plaintiff has had pain and suffering in

the past and is reasonably certain to experience pain and suffering in the future; plaintiff has sustained wage loss and has been damaged in his capacity to earn wages in the future; plaintiff's condition is such that he may be forced to expend sums of money for vocational rehabilitation and/or convalescent care. Plaintiff may be forced to retire early. Based on the above, plaintiff requests damages which will fairly and reasonably compensate the plaintiff for his injuries suffered and damages incurred.

WHEREFORE, Plaintiffs Humbly request that this Honorable Court enter judgment in plaintiff's favor, and against defendant Cottrell, in an amount in excess of \$50,000.00, plus costs of suit, plus such other, further, and different relief as is appropriate.

COUNT II

COMES NOW the plaintiff, Dale Presnell, by and through his undersigned attorneys, and for his cause of action against the defendant, Cottrell, states as follows:

1-15. Plaintiff repeats, realleges and incorporates herein by reference Paragraphs 1-15 of Count I as Paragraphs 1-15 of this Count.

16. That based upon the foregoing, the defendant owed a duty to plaintiff and others similarly situated to design, test and manufacture rigs with due care for the safety of plaintiff and others similarly situated.

17. That in violation of the aforesaid duty, the defendant committed one or more of the following negligent acts or omissions, to-wit:

- (a) failed to access, review and/or analyze injury and testing data available to it including, but not limited to, data from Cassens Transport Company, Cassens Corporation, Cassens & Sons, Inc., NATA, Campbell Chain Company, CFR, Jack Cooper Transport Company, Chrysler Corporation, General Motors Corporation, patents, Leaseway, Anchor Motor Freight, Robert Carr, Ryder/Delavan, Colin Drury, James Miller and Liberty Mutual;

- (b) failed to adequately test its rig to ascertain whether the ladders, walkways, handholds and traction on the rig were reasonably safe for use during the foreseeable and/or intended use of the rig;
- (c) failed to safely design the rig when defendant Cottrell knew or should have known that the rigs were causing excessive numbers of injuries to users;
- (d) failed to supply its rig with adequate ladders, walkways, traction and/or handrails;
- (e) failed to equip its rigs with proper footing, traction and/or handholds in disregard of OSHA, CFR provisions and/or industry standards;
- (f) failed to redesign when it knew or should have known of the number of injuries caused by normal use of the products;
- (g) failed to impress upon others in the industry the need to redesign the rigs notwithstanding its position on committees created for such purposes, including GM committees;
- (h) failed to prohibit removal of handrails;
- (i) failed to warn of the dangers herein alleged.

18. Plaintiff repeats, realleges and incorporates herein by reference Paragraph 16 of Count I as Paragraph 18 of this Count.

WHEREFORE, the plaintiff prays for Judgment against the defendant, Cottrell, for a sum in excess of FIFTY THOUSAND DOLLARS (\$50,000.00) and for costs of this suit.

COUNT III

COMES NOW the plaintiff, Dale Presnell, by and through his undersigned attorneys, and for his cause of action against the defendant, Cottrell, states as follows:

1-15. Plaintiff repeats, realleges and incorporates herein by reference Paragraphs 1-15 of Count I as Paragraphs 1-15 of this Count.

16. That at all times relevant hereto, defendant Cottrell impliedly warranted that the rig in question was reasonably safe for its intended and/or foreseeable uses.

17. That in breach of the aforesaid implied warranty, defendant Cottrell placed into

the stream of commerce a rig which contained one or more of the following unreasonably dangerous conditions listed in Paragraph 12 of Count I.

18. Plaintiff repeats, realleges and incorporates herein by reference Paragraph 16 of Count I as Paragraph 18 of this Count.

WHEREFORE, plaintiff prays for Judgment against the defendant, Cottrell, for a sum in excess of FIFTY THOUSAND DOLLARS (\$50,000.00) and for costs of suit.

COUNT IV

COMES NOW the plaintiff, Dale Presnell, by and through his undersigned attorneys, and for his cause of action against the defendant, Cottrell, states as follows:

1-12. Plaintiff repeats, realleges and incorporates herein by reference Paragraphs 1-12 of Count I as Paragraphs 1-12 of this Count.

13-14. Plaintiff repeats, realleges and incorporates herein by reference Paragraphs 16-17 of Count II as Paragraphs 13-14 of this Count.

15-16. Plaintiff repeats, realleges and incorporates herein by reference Paragraphs 16-17 of Count III as Paragraphs 15-16 of this Count.

17. That at all times relevant hereto defendant was aware that there was a need to redesign the rigs. Defendant was aware that slips and falls from the trailers were reported to be a big problem in the industry. Defendant was further aware that the industry has a high driver injury rate and is labor intensive. Defendant was further aware that the industry treated injuries, including the loss of highly skilled drivers as a minor cost of doing business. Defendant was further aware that in 1979 there was reported 2,549 slip and fall injuries. Defendant was also aware that in 1968 Liberty Mutual recommended the use of traction grating surfaces and handrails. Defendant was also aware that University professors reported the need to add traction

and handrails. Defendant was also aware of hundreds of similar injuries in 1990.

18. That notwithstanding all of the above the defendant continued supplying, manufacturing and placing into the stream of commerce the rigs in question with the above described defects thereon.

19. That the defendant acted in conscious disregard for the safety of users of the rigs and thereby continued in the placing of profits above safety in its continue to reap profits with little or no regard for the safety of users of defendant's products.

WHEREFORE, the plaintiffs pray for Judgments in their favor and against the defendant for an amount in excess of FIFTY THOUSAND DOLLARS (\$50,000.00) in compensatory damages and for an amount in excess of FIFTY THOUSAND DOLLARS (\$50,000.00) in punitive damages and for costs of this suit.

COUNT V
(Negligence)

COMES NOW, Dale Presnell, by and through his attorneys, and in support of his cause of action against defendant, United, states as follows:

1-16. Plaintiff repeats, realleges and incorporates herein by reference Paragraphs 1-16 of Count I as Paragraphs 1-16 of this Count.

17. That defendant participated in and exercised control over the design and testing process of Cottrell rigs and provided instructions to the manufacturer, Cottrell. Further, modifications to the rig in question were performed by United insofar as it, among other things, removed handrails.

18. That defendant had knowledge of, access to and/or possessed documentation of multiple safety reports and records of injuries to drivers including similar injuries.

19. That defendant, United, knew of the defects in the rig through its officers and directors.

20. That defendant through its officers, directors and shareholders profited from the placement of rigs such as at issue into the stream of commerce.

WHEREFORE, plaintiff prays for a Judgment against defendant for a sum in excess of FIFTY THOUSAND DOLLARS (\$50,000.00) and for costs of this suit.

COUNT VI
(Negligence-Direct Liability)

COMES NOW, Dale Presnell, by and through his attorneys, and in support of his cause of action against defendant, United, states as follows:

1-20. Plaintiff repeats, realleges and incorporates herein by reference Paragraphs 1-20 of Count V as Paragraphs 1-20 of this Count.

21. That based upon the foregoing, the defendant owed a duty to plaintiff and others similarly situated to act with due care for the safety of the plaintiff and others similarly situated.

22. That in violation of the aforesaid duty, the defendant committed one or more of the following negligent acts or omissions to-wit:

- (a) directed Cottrell to supply rigs without reasonably safe handholds, traction, ladders or walkways;
- (b) directed Cottrell to fail to require the use of alternative designs when defendant knew or should have known of the number of injuries caused during rig operations;
- (c) directed Cottrell to fail to supply adequate warnings or sufficiently warn plaintiff and others similarly situated of one or more of the defects herein;
- (d) directed Cottrell to fail to adequately test the rigs to ascertain whether the upper decks on the rigs were unreasonably susceptible to cause injury during the foreseeable and/or intended use;
- (e) directed its mechanics to remove upper deck handrails;

- (f) employed or appointed persons who were incompetent, unqualified or unmotivated to perform the functions of the corporation.

23. That as a proximate and direct result of the above the rig in question was ordered, purchased, modified and/or utilized with unsafe and unreasonably dangerous designs in issue and plaintiff was injured. Defendant is directly liable for such injuries and damages.

WHEREFORE, plaintiff prays for a Judgment against defendant for a sum in excess of FIFTY THOUSAND DOLLARS (\$50,000.00) and for costs of this suit.

COUNT VII
(Fraud)

COMES NOW, Dale Presnell, by and through his attorneys, and in support of his cause of action against defendant, United, states as follows:

1-12. Plaintiff repeats, realleges and incorporates herein by reference Paragraphs 1-12 of Count I as Paragraphs 1-12 of this Count.

13. That defendant participated in and exercised control over the design and testing process of Cottrell trailers provided instructions and warnings to the manufacturer. Further, safety training was supplied or to be supplied by United.

14. That defendant had knowledge and documentation of multiple injuries to auto transport drivers including slip and fall injuries.

15. That defendant, United knew of the defects in the rigs through its officers and directors.

16. That United has an office, has officers and directors and has personnel to perform its functions. Said functions include but are not limited to the employment of mechanics to service/maintain the rigs, the employment of a safety office purportedly to reduce injuries and other functions. United:

- (a) assured drivers that the terminals and work related facilities would be supplied which would be as safe as possible;
- (b) adopted a loss control program to encompass all operations related to the transportation process;
- (c) created a personal injury loss control program;
- (d) created a full safety program whereby defendant assured persons such as plaintiff it would work closely with its insurance companies and other offices to enforce safety;
- (e) assured drivers such as plaintiff it would take all practical steps to safeguard drivers from accidents and would maintain an effective safety organization at each terminal location;
- (f) assured drivers such as plaintiff it would promote safe work practices including maintenance of terminal facilities and equipment in safe operating conditions;
- (g) took full responsibility for providing a safe work environment for drivers such as plaintiff and assured them it would take all steps necessary to implement a comprehensive safety program;
- (h) appointed a corporate risk manager to report safety concerns to defendant after review of injury records and after attending loss control meetings for the purpose of taking corrective action.

17. That defendant through its officers, directors and shareholders profited from the placement of rigs such as at issue into the stream of commerce.

18. That defendant by both its words and by its conduct misrepresented material facts regarding its intentions and/or abilities to undertake, create and enforce a safety program applicable to all levels of management.

19. That defendant knew its above representations were untrue and subsequently allowed for the use of rigs without safety equipment so that defendant's officers, directors and shareholders could reap larger profits through increased payloads resulting in higher revenue.

20. That plaintiff and plaintiff's coworkers did not know defendant's misrepresentations were untrue.

21. That defendant intended or expected its misrepresentations would be acted upon by drivers who regularly used the equipment and programs as described above.

22. The plaintiff and others similarly situated, including those acting on behalf of plaintiff relied upon defendant's misrepresentations.

23. That plaintiff will be prejudiced if defendant is now permitted to deny the truth of its representations.

24. That the above statements of material fact by defendant were made with defendant's knowledge that the statements were false and with defendant's intent that the statements induce plaintiff and others similarly situated to act as such persons would and did rely upon the truth of such statements with plaintiff's damages as aforesaid resulting from the reliance on the statements.

WHEREFORE, plaintiff prays for a Judgment in his favor for a sum in excess of FIFTY THOUSAND DOLLARS (\$50,000.00) in compensatory damages and for an amount in excess of FIFTY THOUSAND DOLLARS (\$50,000.00) in punitive damages and for costs of this suit.

COUNT VIII
(Willful & Wanton)

COMES NOW, plaintiff, Dale Presnell, by and through his attorneys, and in support of his cause of action against defendants, United and Cottrell, Inc., states as follows:

1-16. Plaintiff repeats, realleges and incorporates herein by reference Paragraphs 1-16 of Count I as Paragraphs 1-16 of this Count.

17-18. Plaintiffs repeats, realleges and incorporates herein by reference Paragraphs 16-17 of Count II as Paragraphs 17-18 of this Count.

19-22. Plaintiffs repeats, realleges and incorporates herein by reference Paragraphs 17-20 of Count V as Paragraphs 19-22 of this Count.

23-25. Plaintiffs repeats, realleges and incorporates herein by reference Paragraphs 21-23 of Count VI as Paragraphs 23-25 of this Count.

26. That at all times relevant hereto, each of the above identified defendants engaged in willful and wanton behavior with respect to the product in question as enumerated as follows:

- a) placed profits above safety by persistently refusing to read, consider, share, disseminate or even acknowledge the existence of safety data, ergonomic engineer, published engineer and other safety reports specifically and expressly critical of the design identical to or substantially similar to the design in issue;
- b) failing to share, disseminate, seek out, review or acknowledge the existence of hundreds of reports of injuries associated with persons using the design identical to or substantially similar to that in issue;
- c) consistently and persistently sought to increase the hauling capacity and trailer payload of vehicles when defendants knew with every increase in trailer payload drivers such as the plaintiff were being subjected to an increase in the risk of substantial injuries;
- d) created and promoted a "competitive advantage for Cottrell trailers by the use of increased carrying capacity with the dangers described above and the reports and records described above all known to be existence;
- e) placed profits above safety engaging in a series of willful withholding of injury data. Said withholding was premised upon corporate structures which were designed and/or utilized to enable the officers and directors of the various corporations to utilize "corporate knowledge" to exclude knowledge possessed by the officers and directors of the corporation and knowledge possessed and/or available to individual shareholders and/or employees while simultaneously claiming the corporation was unaware of the knowledge of the employees, shareholders and the officers/directors;

- f) retained the services of "experts" to review design safety features of trailers such as that in issue and sought out experts known to be biased such that they were likely to write favorable reports which were baseless in fact and/or law. Even when one or more of such experts drafted unfavorable reports the defendants withheld such reports from persons like plaintiff as well as from the public;
- g) drafted or supplied owners and/or operators and/or safety manuals with precautionary instructions and safety directives which were created to serve as litigation defense tools when the meanings of the terminology in said manuals were unknown to persons who drafted them;
- h) ignored and failed to consider the use of alternative safer designs including designs used in the USA and in other countries as safer alternatives. Defendants professed ignorance of such designs when, in fact, the designs were known to be functional, feasible and within the knowledge of the officers, employees and directors of the defendants.

27. That the defendants engaged in the above behavior in a clear quest to continue to treat injuries associated with the rigs such as at issue as a minor business expense despite recommendations and urging from others that such behavior must cease. Records with such recommendations and urgings were removed and/or deleted from defendants' records along with many other records including records of engineers, ergonomic safety experts and others as described above all so that the defendants could continue to place known dangerous and defectively designed equipment in the stream of commerce so that defendants could continue to reap profits from the use of such products while simultaneously disregarding and continuing to treat injuries as minor business expenses.

WHEREFORE, the plaintiff prays for a Judgment in his favor against each defendant for an amount in excess of FIFTY THOUSAND DOLLARS (\$50,000.00) in compensatory damages and for an amount in excess of FIFTY THOUSAND DOLLARS (\$50,000.00) in exemplary damages and for such other and further relief as deemed just.

COUNT IX

COMES NOW the plaintiff, Lori Presnell, by and through her undersigned attorneys, and for her cause of action against all defendants, states as follows:

1. Plaintiff repeats, realleges and incorporates herein by reference all Paragraphs of all prior Counts as Paragraph 1 of this Count.
2. That at all times relevant hereto the plaintiff, Lori Presnell, was and remains the spouse of the plaintiff, Dale Presnell, and in that capacity was dependent upon Dale Presnell for her support and services.
3. That as a direct and proximate result of the aforesaid, the plaintiff, Lori Presnell, has been deprived of the support and services of her husband.

WHEREFORE, the plaintiff, Lori Presnell, prays for a Judgment in her favor and against each defendant, for an amount in excess of FIFTY THOUSAND DOLLARS (\$50,000.00) and for costs of this action.

WENDLER LAW, P.C.

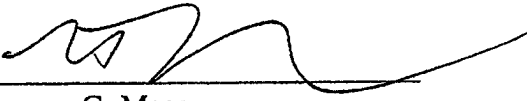
By: 

Thomas G. Maag #6272640
Brian M. Wendler #06196124
900 Hillsboro, Suite 10
Edwardsville, IL 62025
(618) 692-0011
fax (618) 692-0022

AFFIDAVIT OF VALUE

Pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned hereby certifies that the foregoing case has a value in excess of \$50,000.00.

Dated: 7/20/09



Thomas G. Maag

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

DALE PRESNELL and LORI PRESNELL,)

Plaintiffs,)

v.)

COTTRELL, INC. and UNITED ROAD)
SERVICES, INC.,)

Defendants.)


Case No.

(Removed from the Circuit Court
of the Twentieth Judicial Circuit,
St. Clair County, State of Illinois,
Case No. 09-L-388)

CONSENT TO REMOVAL

Defendant United Road Services, Inc., with full reservation of any and all rights and defenses, including and without waiving personal jurisdiction and/or service of process, hereby consents to removal of the above-captioned case, which was originally filed in the Circuit Court of St. Clair County, Illinois, Twentieth Judicial Circuit.

Respectfully submitted:


Counsel for Defendant
United Road Services, Inc.

Sandra J. Engelking
ARDC # 6286111
SmithAmundsen LLC
150 North Michigan Avenue, #3300
Chicago, IL 60601
(312) 894-3200
SEngelking@salawus.com

Exhibit B

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

DALE PRESNELL and LORI PRESNELL,))	
)	
Plaintiffs,)	
)	
v.)	Case No. 09-656-JPG
)	
COTTRELL, INC. and UNITED ROAD))	(Removed from the Circuit Court
SERVICES, INC.,)	of the Twentieth Judicial Circuit,
)	St. Clair County, State of Illinois,
Defendants.)	Case No. 09-L-388)

AMENDED NOTICE OF REMOVAL OF CIVIL ACTION

COMES NOW COTTRELL, INC., ("Cottrell"), by and through its attorneys, BRYAN CAVE LLP, and pursuant to the Court's 12/14/09 Order, for its Amended Notice of Removal of Civil Action pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, states as follows:

Short and Plain Statement of Grounds for Removal

I. Background and Parties

1. Cottrell is a defendant in this civil action, originally filed on July 21, 2009, in the Circuit Court of the Twentieth Judicial Circuit, St. Clair County, Illinois. Plaintiffs seek damages arising out of an alleged accident involving Mr. Presnell. The alleged accident purportedly involved a trailer which Plaintiffs claim was manufactured by Cottrell.
2. Plaintiffs are citizens of Tennessee.
3. Cottrell is a citizen of Georgia, incorporated under the laws of the State of Georgia and having its principal place of business in Georgia.
4. Defendant United Road Services, Inc. is a citizen of Delaware and Michigan, incorporated under the laws of the State of Delaware and having its principal place of business in Michigan.

II. Basis for Removal

5. Complete diversity exists in this case.

6. The amount in controversy of Dale Presnell's claims exceeds the sum or value of \$75,000, exclusive of interest and costs. He has alleged continuing injuries: "plaintiff. . . sustained severe and permanent injuries. . . . Plaintiff has suffered and will continue to suffer pain and mental anguish; plaintiff's injuries are to his back, head and related areas. Plaintiff's injuries are disfiguring and are permanent in nature; plaintiff has been required to expend large sums of money in order to obtain medical treatment for his injuries and will be required to expend additional sums in the future; plaintiff has had pain and suffering in the past and is reasonably certain to experience pain and suffering in the future; plaintiff has sustained wage loss and has been damaged in his capacity to earn wages in the future; plaintiff's condition is such that he may be forced to expend sums of money for vocational rehabilitation and/or convalescent care." See Count I, ¶ 16. In addition, the Complaint seeks "in excess of \$50,000" in compensatory damages and "in excess of \$50,000" in punitive damages. See Count IV, last paragraph.

7. Under 28 U.S.C. § 1367(a), Lori Presnell's claims for loss of consortium damages may be properly joined under supplemental jurisdiction because her claims form part of the same case or controversy. Any exceptions to 28 U.S.C. § 1367(a) do not apply. Accordingly, the consortium claim may be joined even if it is not in excess of \$75,000, exclusive of interest and costs.

III. Conclusion

8. This action is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. §1332.

9. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b) in that Cottrell received service of this Complaint on August 6, 2009 and this notice is filed within 30 days thereafter. This action is not more than one year old.

10. Pursuant to 28 U.S.C. § 1446(d), promptly after filing this Notice of Removal, Cottrell will give written notice thereof to the Plaintiffs and will file a copy of its Notice of Removal with the Circuit Court of St. Clair County, State of Illinois.

11. Pursuant to 28 U.S.C. § 1446(a), copies of the summons and complaint, constituting all the process and pleadings served upon Cottrell in the state court action, are attached hereto as Exhibit A.

12. The written consent of defendant United Road Services, Inc. is attached as Exhibit B.

13. Cottrell hereby demands a trial by jury.

WHEREFORE, Cottrell requests that this action be removed from the Circuit Court of St. Clair County, State of Illinois to the Southern District of Illinois, for all purposes.

Respectfully submitted:

BRYAN CAVE LLP

/s/ Amy J Lorenz-Moser
Dan H. Ball, #06192613
Daniel J. Carpenter, #06186922
Amy Lorenz-Moser, #162866
211 N. Broadway, Suite 3600
St. Louis, MO 63102
Telephone: (314) 259-2000
Facsimile: (314) 259-2020

Attorneys for Defendant
Cottrell, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of December, 2009, a copy of the foregoing was electronically filed with the Court, and will be sent electronically by the Court to counsel of record.

/s/ Amy J Lorenz-Moser

IN THE CIRCUIT COURT OF
FOR THE 20TH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

DALE PRESNELL and
LORI PRESNELL,

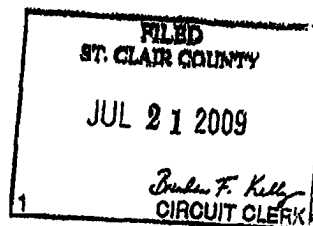
Plaintiffs,

vs.

COTTRELL, INC. and
UNITED ROAD SERVICES, INC.

Defendants.

Case No. 09L388



COMPLAINT

Allegations Common To All Counts

1. That the defendant, Cottrell, Inc. ("Cottrell") is a corporation organized and existing under the laws of the State of Georgia with its principal place of business located in the City of Gainesville, and doing business in the State of Illinois. Cottrell regularly does business in St. Clair County, Illinois. On all dates herein it is believed plaintiff was using a Cottrell rig which can be verified and/or further identification and information can be supplied by URS Midwest, Inc., plaintiff's employer. Plaintiff was hired in Illinois.
2. That the plaintiff, Lori Presnell, at all times relevant hereto was the spouse of Dale Presnell and in that capacity was dependent upon him for her support and services.
3. That plaintiff was an employee of URS Midwest, Inc., a Delaware corporation which has an office and terminal located in Centerville, St. Clair County, Illinois. Plaintiff was hired to work at said terminal.
4. That the rig in question is believed to be a model C-11 HLS manufactured in 2008 with fleet number 9319.

Exhibit A

5. That, United Road Services, Inc. ("United") is an Illinois corporation which regularly transacts business, has offices in and operates in Illinois including this County. This defendant through its officers and/or directors knew of the hazards and defects herein prior to plaintiff's injury.

6. That United is a separate corporation from URS Midwest, Inc. Neither plaintiff has ever been an employee of United.

COUNT I

COMES NOW the plaintiff, Dale Presnell, by and through his undersigned attorneys, and for his cause of action against the defendant, Cottrell, states as follows:

7. At all times relevant, plaintiff Dale Presnell ("Michael") was using a trailer and headrack manufactured by Cottrell which company placed said trailer and headrack into the stream of commerce for profit and for use in interstate transportation including in Illinois.

8. That on or about December 18, 2009, plaintiff, Dale Presnell, was performing his normal work duties as a car hauler.

9. At that time and place, plaintiff was operating the aforesaid truck, trailer with head rack ("rig") believed to have been manufactured and designed by the defendant, Cottrell. Pursuant to his duties, plaintiff was injured while maneuvering on the upper deck of the rig while in the performance of his duties.

10. That at all times relevant herein, the aforesaid rig was in substantially the same condition as when the rig left the control of defendant. Any modifications or alternations did not result in a substantial change or, alternatively, were foreseeable or expected.

11. That defendant placed the aforesaid rig into the stream of commerce as part of its regular business activity for ultimate use in this State.

12. At all times relevant, the trailer and headrack were manufactured and designed in such a fashion and manner that it was not reasonably safe for its intended use, in one or more of the following respects:

- (a) the rig was not equipped with a reasonably safe ladders, footing, walkways, traction and/or hand holds;
- (b) the warning(s) posted on the truck, if existent, failed to sufficiently warn plaintiff and others similarly situated of one or more of the above defects;
- (c) the instructions supplied with the truck, if existent, failed to sufficiently warn plaintiff and others similarly situated of the defective and/or unreasonably dangerous nature of the rig;
- (d) the rig was lacking a deck to stand, walk or maneuver on;
- (e) the rig was supplied with handrails which were not coupled with prohibitions against removal.

13. At all times relevant, Cottrell had a duty to manufacture a rig, in such a fashion, as to be reasonably safe for its intended use.

14. In violation of its duty, Cottrell acted as heretofore alleged.

15. Venue is proper in St. Clair County, as some part of the transaction took place in St. Clair County, the truck was introduced into commerce in St. Clair County, and defendants do business in St. Clair County, Illinois.

16. That as a direct and proximate result of the aforesaid, plaintiff, while attempting to maneuver on the upper deck of the rig in the course of his duties as a truck driver, sustained severe and permanent injuries when he fell from the top of the rig. Plaintiff has suffered and will continue to suffer pain and mental anguish; plaintiff's injuries are to his back, head and related areas. Plaintiff's injuries are disfiguring and are permanent in nature; plaintiff has been required to expend large sums of money in order to obtain medical treatment for his injuries and will be required to expend additional sums in the future; plaintiff has had pain and suffering in

the past and is reasonably certain to experience pain and suffering in the future; plaintiff has sustained wage loss and has been damaged in his capacity to earn wages in the future; plaintiff's condition is such that he may be forced to expend sums of money for vocational rehabilitation and/or convalescent care. Plaintiff may be forced to retire early. Based on the above, plaintiff requests damages which will fairly and reasonably compensate the plaintiff for his injuries suffered and damages incurred.

WHEREFORE, Plaintiffs Humbly request that this Honorable Court enter judgment in plaintiff's favor, and against defendant Cottrell, in an amount in excess of \$50,000.00, plus costs of suit, plus such other, further, and different relief as is appropriate.

COUNT II

COMES NOW the plaintiff, Dale Presnell, by and through his undersigned attorneys, and for his cause of action against the defendant, Cottrell, states as follows:

1-15. Plaintiff repeats, realleges and incorporates herein by reference Paragraphs 1-15 of Count I as Paragraphs 1-15 of this Count.

16. That based upon the foregoing, the defendant owed a duty to plaintiff and others similarly situated to design, test and manufacture rigs with due care for the safety of plaintiff and others similarly situated.

17. That in violation of the aforesaid duty, the defendant committed one or more of the following negligent acts or omissions, to-wit:

- (a) failed to access, review and/or analyze injury and testing data available to it including, but not limited to, data from Cassens Transport Company, Cassens Corporation, Cassens & Sons, Inc., NATA, Campbell Chain Company, CFR, Jack Cooper Transport Company, Chrysler Corporation, General Motors Corporation, patents, Leaseway, Anchor Motor Freight, Robert Carr, Ryder/Delavan, Colin Drury, James Miller and Liberty Mutual;

- (b) failed to adequately test its rig to ascertain whether the ladders, walkways, handholds and traction on the rig were reasonably safe for use during the foreseeable and/or intended use of the rig;
- (c) failed to safely design the rig when defendant Cottrell knew or should have known that the rigs were causing excessive numbers of injuries to users;
- (d) failed to supply its rig with adequate ladders, walkways, traction and/or handrails;
- (e) failed to equip its rigs with proper footing, traction and/or handholds in disregard of OSHA, CFR provisions and/or industry standards;
- (f) failed to redesign when it knew or should have known of the number of injuries caused by normal use of the products;
- (g) failed to impress upon others in the industry the need to redesign the rigs notwithstanding its position on committees created for such purposes, including GM committees;
- (h) failed to prohibit removal of handrails;
- (i) failed to warn of the dangers herein alleged.

18. Plaintiff repeats, realleges and incorporates herein by reference Paragraph 16 of Count I as Paragraph 18 of this Count.

WHEREFORE, the plaintiff prays for Judgment against the defendant, Cottrell, for a sum in excess of FIFTY THOUSAND DOLLARS (\$50,000.00) and for costs of this suit.

COUNT III

COMES NOW the plaintiff, Dale Presnell, by and through his undersigned attorneys, and for his cause of action against the defendant, Cottrell, states as follows:

1-15. Plaintiff repeats, realleges and incorporates herein by reference Paragraphs 1-15 of Count I as Paragraphs 1-15 of this Count.

16. That at all times relevant hereto, defendant Cottrell impliedly warranted that the rig in question was reasonably safe for its intended and/or foreseeable uses.

17. That in breach of the aforesaid implied warranty, defendant Cottrell placed into

the stream of commerce a rig which contained one or more of the following unreasonably dangerous conditions listed in Paragraph 12 of Count I.

18. Plaintiff repeats, realleges and incorporates herein by reference Paragraph 16 of Count I as Paragraph 18 of this Count.

WHEREFORE, plaintiff prays for Judgment against the defendant, Cottrell, for a sum in excess of FIFTY THOUSAND DOLLARS (\$50,000.00) and for costs of suit.

COUNT IV

COMES NOW the plaintiff, Dale Presnell, by and through his undersigned attorneys, and for his cause of action against the defendant, Cottrell, states as follows:

1-12. Plaintiff repeats, realleges and incorporates herein by reference Paragraphs 1-12 of Count I as Paragraphs 1-12 of this Count.

13-14. Plaintiff repeats, realleges and incorporates herein by reference Paragraphs 16-17 of Count II as Paragraphs 13-14 of this Count.

15-16. Plaintiff repeats, realleges and incorporates herein by reference Paragraphs 16-17 of Count III as Paragraphs 15-16 of this Count.

17. That at all times relevant hereto defendant was aware that there was a need to redesign the rigs. Defendant was aware that slips and falls from the trailers were reported to be a big problem in the industry. Defendant was further aware that the industry has a high driver injury rate and is labor intensive. Defendant was further aware that the industry treated injuries, including the loss of highly skilled drivers as a minor cost of doing business. Defendant was further aware that in 1979 there was reported 2,549 slip and fall injuries. Defendant was also aware that in 1968 Liberty Mutual recommended the use of traction grating surfaces and handrails. Defendant was also aware that University professors reported the need to add traction

and handrails. Defendant was also aware of hundreds of similar injuries in 1990.

18. That notwithstanding all of the above the defendant continued supplying, manufacturing and placing into the stream of commerce the rigs in question with the above described defects thereon.

19. That the defendant acted in conscious disregard for the safety of users of the rigs and thereby continued in the placing of profits above safety in its continue to reap profits with little or no regard for the safety of users of defendant's products.

WHEREFORE, the plaintiffs pray for Judgments in their favor and against the defendant for an amount in excess of FIFTY THOUSAND DOLLARS (\$50,000.00) in compensatory damages and for an amount in excess of FIFTY THOUSAND DOLLARS (\$50,000.00) in punitive damages and for costs of this suit.

COUNT V
(Negligence)

COMES NOW, Dale Presnell, by and through his attorneys, and in support of his cause of action against defendant, United, states as follows:

1-16. Plaintiff repeats, realleges and incorporates herein by reference Paragraphs 1-16 of Count I as Paragraphs 1-16 of this Count.

17. That defendant participated in and exercised control over the design and testing process of Cottrell rigs and provided instructions to the manufacturer, Cottrell. Further, modifications to the rig in question were performed by United insofar as it, among other things, removed handrails.

18. That defendant had knowledge of, access to and/or possessed documentation of multiple safety reports and records of injuries to drivers including similar injuries.

19. That defendant, United, knew of the defects in the rig through its officers and directors.

20. That defendant through its officers, directors and shareholders profited from the placement of rigs such as at issue into the stream of commerce.

WHEREFORE, plaintiff prays for a Judgment against defendant for a sum in excess of FIFTY THOUSAND DOLLARS (\$50,000.00) and for costs of this suit.

COUNT VI
(Negligence-Direct Liability)

COMES NOW, Dale Presnell, by and through his attorneys, and in support of his cause of action against defendant, United, states as follows:

1-20. Plaintiff repeats, realleges and incorporates herein by reference Paragraphs 1-20 of Count V as Paragraphs 1-20 of this Count.

21. That based upon the foregoing, the defendant owed a duty to plaintiff and others similarly situated to act with due care for the safety of the plaintiff and others similarly situated.

22. That in violation of the aforesaid duty, the defendant committed one or more of the following negligent acts or omissions to-wit:

- (a) directed Cottrell to supply rigs without reasonably safe handholds, traction, ladders or walkways;
- (b) directed Cottrell to fail to require the use of alternative designs when defendant knew or should have known of the number of injuries caused during rig operations;
- (c) directed Cottrell to fail to supply adequate warnings or sufficiently warn plaintiff and others similarly situated of one or more of the defects herein;
- (d) directed Cottrell to fail to adequately test the rigs to ascertain whether the upper decks on the rigs were unreasonably susceptible to cause injury during the foreseeable and/or intended use;
- (e) directed its mechanics to remove upper deck handrails;

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

DALE PRESNELL and LORI PRESNELL,

Plaintiffs,

v.

COTTRELL, INC. and UNITED ROAD
SERVICES, INC.,

Defendants.

Case No. 09-cv-656-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on the motion of defendant United Road Services, Inc. (“United”) to transfer this case to the United States District Court for the Eastern District of Michigan or, in the alternative, to the United States District Court for the Eastern District of Tennessee (Doc. 43). Defendant Cottrell, Inc. has joined in the motion (Doc. 49). Plaintiffs Dale Presnell and Lori Presnell (collectively, “the Presnells”) have responded to the motion agreeing that the case should be transferred but asking that it be transferred to the United States District Court for the Northern District of Georgia or, in the alternative, “to a Court in Tennessee of plaintiff’s [sic] choice” (Doc. 51). United has filed a reply to the Presnells’ response (Doc. 54).

I. Background

Plaintiff Dale Presnell was an over-the-road truck driver employed by URS Midwest, Inc., a wholly owned subsidiary of United. On December 18, 2008, he was delivering vehicles at Buff Whelan Chevrolet in Sterling Heights, Michigan. In the process of making the delivery, he allegedly fell from a car-hauler rig and was injured. An employee of Buff Whelan Chevrolet found him on the ground after his alleged fall. An ambulance transported Presnell to a hospital

in Troy, Michigan, where he was treated in the emergency room and admitted to the hospital for a five-day stay. All this occurred in the Eastern District of Michigan.

When Presnell returned to his home in Gray, Tennessee, he continued to receive treatment for his injuries from at least seven other medical providers, all located in or around Johnson City, Tennessee. Presnell's father, who was also at Buff Whelan Chevrolet at the time of Presnell's alleged fall, lives in Johnson City. Gray and Johnson City are within the Eastern District of Tennessee. At the time of Presnell's alleged fall, his employment with URS Midwest, Inc. was based in Spring Hill, Tennessee, although that terminal has since closed.¹

The Presnells filed suit to recover for Dale Presnell's injuries. They originally filed this case in the Circuit Court for the Twentieth Judicial Circuit in St. Clair County, Illinois. They allege that Cottrell and United designed, tested, manufactured and/or altered the car-hauler rig at issue in this case. Presnell alleges that the defendants are liable for his injuries under theories of products liability, negligence, breach of implied warranty, fraud and willful and wanton injury. Lori Presnell also seeks to recover for loss of consortium. Cottrell removed the case to federal court under 28 U.S.C. § 1441(a), relying on the Court's original diversity jurisdiction under 28 U.S.C. § 1332(a).

United now asks the Court to transfer this case to the United States District Court for the Eastern District of Michigan or, in the alternative, to the United States District Court for the Eastern District of Tennessee. The Presnells agree that the case should be transferred but to the United States District Court for the Northern District of Georgia, where Cottrell's engineers and other witnesses are located, or, in the alternative, "to a Court in Tennessee of plaintiff's [*sic*]

¹It is not entirely clear in which district Spring Hill lies. A Mapquest search reveals that there are seven Spring Hills in Tennessee.

choice.” United is a citizen of Delaware and Michigan, Cottrell is a citizen of Georgia, and the Presnells are citizens of Tennessee.

II. Transfer Standards

United does not contest that venue is proper in the Southern District of Illinois under 28 U.S.C. § 1391 and therefore does not seek a change of venue pursuant to 28 U.S.C. § 1406, which governs transfer or dismissal when venue is improper. *Van Dusen v. Barrack*, 376 U.S. 612, 634 (1964). Instead, United relies exclusively on 28 U.S.C. § 1404(a), under which a district court may transfer a civil action to any other district where the action might have been brought originally “[f]or the convenience of parties and witnesses, in the interest of justice.” 28 U.S.C. § 1404(a). The decision to transfer a case is left to the discretion of the district court. *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988); *Van Dusen*, 376 U.S. at 622; *Cote v. Wadel*, 796 F.2d 981, 985 (7th Cir. 1986); see *Norwood v. Kirkpatrick*, 349 U.S. 29, 32 (1955).

In deciding a § 1404(a) motion to transfer, the Court should consider a number of case-specific factors such as the convenience of the potential transferee forum to the parties and witnesses and the interests of justice in general. *Stewart*, 487 U.S. at 29-30; see *Coffey v. Van Dorn Iron Works*, 796 F.2d 217, 219 (7th Cir. 1986) (citing *Van Dusen*, 376 U.S. at 622). “The movant . . . has the burden of establishing, by reference to particular circumstances, that the transferee forum is clearly more convenient,” *Coffey*, 796 F.2d at 219-20, and the Court must give some weight in favor of the forum in which the plaintiff chose to file the complaint, *Heller Fin., Inc. v. Midwhey Powder Co.*, 883 F.2d 1286, 1294 (7th Cir. 1989); *Macedo v. Boeing Co.*, 693 F.2d 683, 688 (7th Cir. 1982).

Courts frequently consider specific factors such as the plaintiff’s choice of forum, the location of the relevant events, documents and evidence, the convenience to the witnesses and

parties, the relation of the controversy to the forum, the court's familiarity with the applicable law and the speed with which a case can be tried. *Method Elecs., Inc. v. Delphi Auto. Sys. LLC*, 639 F. Supp. 2d 903, 907 (N.D. Ill. 2009). Even if the circumstances indicate that a transfer would be clearly more convenient to the parties and witnesses, a court may still refuse to transfer the case if it is not in the interest of justice. *Coffey*, 796 F.2d at 220; *Van Dusen*, 376 U.S. at 625. "Factors traditionally considered in an 'interest of justice' analysis relate to the efficient administration of the court system," including where the litigants are more likely to receive a speedy trial. *Coffey*, 796 F.2d at 221.

III. Analysis

In light of the Presnells' concession that the case should not be tried in Illinois, the Court finds that transfer is appropriate. Indeed, there are no substantial connections between Illinois and this controversy, and trying the case in any of the three districts contemplated by the parties would be clearly more convenient than trying the case in the Southern District of Illinois. Furthermore, the interests of justice strongly weigh against trying this case in a district that has no colorable interest in the controversy.

That leaves the question of the proper forum to which this case should be transferred. Venue appears to be proper and jurisdiction appears to exist over all defendants in the Eastern District of Michigan, the Eastern District of Tennessee and the Northern District of Georgia. In answering the venue question, the Court looks to the same factors used to answer the threshold question of whether transfer is proper. In light of the particular circumstances of this case, the Court finds that United has met its burden of showing that the Eastern District of Michigan is the most convenient of the three districts the parties contemplate and that a transfer of venue to that district is in the interest of justice.

A. Plaintiffs' Chosen Forum

Ordinarily the Court should give this factor substantial weight and should rarely transfer a case from the plaintiff's selected forum. *In re Nat'l Presto Indus., Inc.*, 347 F.3d 662, 663-64 (7th Cir. 2003). However, the importance of the plaintiffs' choice of forum is reduced when the plaintiffs do not live in the forum, few relevant events occurred in the forum and other factors weigh heavily in favor of a transfer. That is the situation in this case. Additionally, the plaintiffs' choice is rendered moot by their agreement that a transfer is appropriate in light of the absence of connections between Illinois and this case.

The Court gives the plaintiffs' request for transfer to Georgia, where both defendants maintain offices, or "to a Court in Tennessee of plaintiff's [*sic*] choice" little weight in light of the fact that they could have but did not choose to file this case in those places to begin with. Further, the Presnells' alternative request for a transfer "to a Court in Tennessee of plaintiff's [*sic*] choice" is too vague and is unsupported by any argument.

B. Convenience to the Witnesses

A majority of the non-party witnesses who can testify to the circumstances of Presnell's alleged fall and its immediate aftermath— the person who found him and the first responders — are located in Michigan. Trial in the Eastern District of Michigan would clearly be more convenient for them. Presnell's father, who may also testify about Presnell immediately following the alleged fall, is the only non-party, non-medical witness for whom a Tennessee forum would be more convenient. None of the witnesses connected to Presnell's alleged fall reside in Georgia.

As for Presnell's medical providers, those who treated him immediately after his alleged fall are in the Eastern District of Michigan, and those who treated him after he returned home are

in the Eastern District of Tennessee. Clearly live testimony for each group would be more convenient in its home court. However, with respect to these witnesses, the convenience factor is rendered somewhat less important by the fact that, unlike eyewitness testimony, medical witness testimony is often presented by video deposition and does not require personal appearance at trial. In sum, in light of their relatively even distribution between Michigan and Tennessee and the likelihood that they will not testify in person, these witnesses' convenience favors neither Michigan nor Tennessee, but counsels against Georgia, where none are located.

The Court now turns to the parties themselves. It is logical that trial in the Eastern District of Tennessee would be more convenient for the Presnells. However, by their originally filing this case in St. Clair County, Illinois, the Presnells have demonstrated a willingness and ability to travel a substantial distance from their home – more than 550 miles – to litigate this case. It should therefore be no less convenient for them to travel a roughly equivalent distance to a courthouse in the Eastern District of Michigan. Additionally, the Presnells now request a trial in Gainesville, Georgia, more than 200 miles from their home. Clearly, travel is no obstacle to the Presnells. The Court, therefore, does not give their convenience much weight.

United's and URS Midwest, Inc.'s witnesses with knowledge relevant to this case are concentrated in the Eastern District of Michigan, where both companies have their principal places of business, although one witness with knowledge about the Spring Hill, Tennessee, terminal still resides in Tennessee. The Eastern District of Michigan is clearly most convenient for most of these witnesses.

Cottrell's witnesses involved in the design, testing and manufacturing of the car-hauler rig in question presumably reside in the Northern District of Georgia, Cottrell's principal place of business. However, by joining in United's motion to transfer and by failing to join the

Presnells' alternative proposal that the case be transferred to the Northern District of Georgia, Cottrell has expressed its preference for a transfer to either of the two venues suggested by United. Therefore, the Court gives little weight to the convenience of a Georgia forum to Cottrell's witnesses.

On balance, it appears that the Eastern District of Michigan is slightly more convenient to the important witnesses in this case than the Eastern District of Tennessee and is clearly more convenient than the Northern District of Georgia.

As for the location of the documentary evidence, considering the pervasive use and availability of electronic records and methods of transmission, this factor weighs in favor of none of the districts.

C. Interest of Justice

The interest of justice warrants trying this case in the Eastern District of Michigan.

The efficient and speedy administration factor favors no district. The average length of time from filing to disposition in the Eastern District of Michigan and the Eastern District of Tennessee is negligible and varies from year to year, so the Court gives little weight to that factor. The Presnells have provided no data showing a Georgia forum would be substantially more efficient or speedy.

The Court is further mindful that the United States District Court for the Eastern District of Michigan has a strong interest in resolving cases involving injuries that occur in that district. It is also more likely to be adept at applying Michigan substantive law, which is likely to be applicable in this case since Michigan was the site of the alleged injury.

In sum, the interests of justice weigh in favor of a transfer to the Eastern District of Michigan.

IV. Conclusion

For these reasons, the Court finds that the convenience of the witnesses and the parties and the interest of justice favor litigating this action in the Eastern District of Michigan.

Accordingly, the Court **GRANTS** United's motion to transfer (Doc. 43) and **TRANSFERS** this case pursuant to 28 U.S.C. § 1404(a) to the United States District Court for the Eastern District of Michigan.

IT IS SO ORDERED.
DATED: April 28, 2010

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE

Case: 2:10-cv-11991
Judge: Cook, Julian Abele
MJ: Morgan, Virginia M
Filed: 05-18-2010 At 09:38 AM
TRANS DALE PRESNELL, ET AL V COTTRELL, INC, ET AL (CJG)

**U.S. District Court
Southern District of Illinois ()
CIVIL DOCKET FOR CASE #: 3:09-cv-00656-JPG-DGW
Internal Use Only**

Presnell et al v. Cottrell, Inc. et al
Assigned to: Judge J. Phil Gilbert
Referred to: Magistrate Judge Donald G. Wilkerson
Case in other court: St. Clair County Court, 09-L-388
Cause: 28:1332 Diversity-Personal Injury

Date Filed: 08/24/2009
Date Terminated: 04/28/2010
Jury Demand: Defendant
Nature of Suit: 365 Personal Inj. Prod.
Liability
Jurisdiction: Diversity

Plaintiff

Dale Presnell

represented by **Brian M. Wendler**
Wendler Law P.C.
Generally Admitted
900 Hillsboro
Suite 10
Edwardsville, IL 62025
618-692-0011
Fax: 618-692-0022
Email: bwend@piasanet.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Thomas G. Maag
Wendler Law P.C.
Generally Admitted
900 Hillsboro
Suite 10
Edwardsville, IL 62025
618-692-0011
Fax: 618-692-0022
Email: tmaag@maaglaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Charles W. Armbruster, III
Armbruster, Dripps, et al.
P. O. Box 8338
219 Piasa Street
Alton, IL 62002
800-917-1529
Fax: 800-927-1529
Email: charlesa@adwblaw.com
ATTORNEY TO BE NOTICED

CERTIFIED TRUE COPY
By *Donald K. Love*
Deputy Clerk
Date 4/28/10

Peter J. Maag
Maag Law Firm, LLC
P.O. Box 224
Breese, IL 62230
618-541-2934
Fax: 618-692-0022
Email: pjmaag@gmail.com
ATTORNEY TO BE NOTICED

Plaintiff

Lori Presnell

represented by **Brian M. Wendler**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Thomas G. Maag
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Charles W. Armbruster , III
(See above for address)
ATTORNEY TO BE NOTICED

Peter J. Maag
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

Cottrell, Inc.

represented by **Amy J. Lorenz-Moser**
Armstrong Teasdale - St. Louis
Generally Admitted
One Metropolitan Square
211 North Broadway, Suite 2600
St. Louis, MO 63102-2740
314-621-5070
Fax: 314-621-5065
Email:
alorenzmoser@armstrongteasdale.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Daniel J. Carpenter
Armstrong Teasdale - St. Louis
Generally Admitted
One Metropolitan Square
211 North Broadway, Suite 2600

St. Louis, MO 63102-2740
314-621-5070
Fax: 314-621-5065
Email:
dcarpenter@armstrongteasdale.com
ATTORNEY TO BE NOTICED

Theresa M. Lynch
Armstrong Teasdale - St. Louis
Generally Admitted
One Metropolitan Square
211 North Broadway, Suite 2600
St. Louis, MO 63102-2740
314-621-5070
Fax: 314-621-5065
Email: tlynch@armstrongteasdale.com
ATTORNEY TO BE NOTICED

Defendant

United Road Services, Inc.

represented by **Lew R.C. Bricker**
Smith Amundsen LLC
150 North Michigan Avenue
Suite 3300
Chicago, IL 60601
312-894-3200
Fax: 312-894-3210
Email: lbricker@salawus.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sandra J. Engelking
Smith Amundsen LLC
150 North Michigan Avenue
Suite 3300
Chicago, IL 60601
312-894-3200
Fax: 312-894-3210
Email: sengelking@salawus.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Randall J. Moore
Roetzel & Andress
222 South Main Street
Suite 400
Akron, OH 44308
330-376-2700
Fax: 330-376-4577
Email: rmoore@ralaw.com
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
08/24/2009	<u>1</u>	Case Opened. Filing fee paid \$350.00, Receipt Number 34625014906. Documents may now be electronically filed. Case number 09-656-JPG must be placed on all documents prior to filing them electronically. (Attachments: # <u>1</u> notice of consent to magistrate judge)(lmt) (Entered: 08/24/2009)
08/24/2009	<u>2</u>	NOTICE OF REMOVAL by Cottrell, Inc. from St. Clair County, case number 09-L-388. (Filing fee \$ 350) (Attachments: # <u>1</u> Civel Cover Sheet, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B)(Lorenz-Moser, Amy) (Entered: 08/24/2009)
08/24/2009	<u>3</u>	DISCLOSURE OF INTERESTED PARTIES by Cottrell, Inc..(Lorenz-Moser, Amy) (Entered: 08/24/2009)
08/25/2009		(Court only) ***Staff notes. Jurisdiction checked. (tlp) (Entered: 08/25/2009)
08/25/2009		(Court only) ***Staff notes - Track B (bkl) (Entered: 08/25/2009)
08/25/2009	<u>4</u>	NOTICE by Cottrell, Inc. <i>Notice of Filing Notice of Removal to St. Clair County</i> (Attachments: # <u>1</u> Notice to St. Clair County)(Lorenz-Moser, Amy) (Entered: 08/25/2009)
08/28/2009	<u>5</u>	ANSWER to Complaint with Jury Demand by Cottrell, Inc..(Lorenz-Moser, Amy) (Entered: 08/28/2009)
08/31/2009	<u>6</u>	NOTICE of Appearance by Sandra J. Engelking on behalf of United Road Services, Inc. (Engelking, Sandra) (Entered: 08/31/2009)
08/31/2009	<u>7</u>	NOTICE by United Road Services, Inc. <i>Certificate of Service for Appearance for United Road Service, Inc.</i> (Engelking, Sandra) (Entered: 08/31/2009)
09/01/2009	<u>8</u>	ORDER re <u>6</u> Notice of Appearance filed by United Road Services, Inc. Party failed to file corporate disclosure as required by F.R.Civ.P. 7.1. Requisite filing must be made on or before 9/11/2009. Failure to do so may result in the striking of all present and future filings. Signed by Judge J. Phil Gilbert on 9/1/09. (tlp)THIS TEXT ENTRY IS AN ORDER OF THE COURT. NO FURTHER DOCUMENTATION WILL BE MAILED. (Entered: 09/01/2009)
09/01/2009	<u>9</u>	NOTICE OF ERRORS AND/OR DEFICIENCIES re <u>6</u> Notice of Appearance filed by United Road Services, Inc., <u>7</u> Notice (Other) filed by United Road Services, Inc. See attached document for specifics. (bkl) (Entered: 09/01/2009)
09/08/2009	<u>10</u>	MOTION to Remand to State Court by Dale Presnell, Lori Presnell. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Maag, Peter) (Entered: 09/08/2009)
09/11/2009	<u>11</u>	DISCLOSURE OF INTERESTED PARTIES by United Road Services,

		Inc..(Engelking, Sandra) (Entered: 09/11/2009)
09/14/2009		(Court only) ***Staff notes. Conflicts checked. (tlp) (Entered: 09/14/2009)
09/14/2009	<u>12</u>	MOTION for Extension of Time to File Answer by United Road Services, Inc.. (Engelking, Sandra) (Entered: 09/14/2009)
09/30/2009		(Court only) ***Staff notes Track B. Final Pre-trial set for 9/2/2010 at 9:30 a.m. with a jury trial setting of 9/13/2010 at 9:00 a.m. in Benton, IL. (by:kjr) (Entered: 09/30/2009)
09/30/2009	<u>13</u>	CJRA TRACK B assigned: Final Pretrial Conference set for 9/2/2010 at 09:30 AM in Benton Courthouse before Judge J. Phil Gilbert. Jury Trial set for 9/13/2010 at 09:00 AM in Benton Courthouse before Judge J. Phil Gilbert. (by:kjr) (Entered: 09/30/2009)
09/30/2009	<u>14</u>	NOTICE TO COUNSEL: Scheduling/Discovery Conference set for 11/20/2009 at 2:30 PM in East St. Louis Courthouse before Magistrate Judge Donald G. Wilkerson. (jmp) (Entered: 09/30/2009)
10/05/2009	<u>15</u>	NOTICE of Appearance by Lew R.C. Bricker on behalf of United Road Services, Inc. (Bricker, Lew) (Entered: 10/05/2009)
10/07/2009	<u>16</u>	ORDER granting <u>12</u> Defendant United Road Services, Inc.'s Motion for Extension of Time to Answer. Defendant United Road Services, Inc. is ordered to file an answer or otherwise respond to Plaintiffs' complaint by October 13, 2009. Signed by Magistrate Judge Donald G. Wilkerson on 10/7/2009. (klb)THIS TEXT ENTRY IS AN ORDER OF THE COURT. NO FURTHER DOCUMENTATION WILL BE MAILED. (Entered: 10/07/2009)
10/12/2009	<u>17</u>	MEMORANDUM in Opposition re <u>10</u> MOTION to Remand to State Court filed by United Road Services, Inc.. (Attachments: # <u>1</u> Exhibit Affidavit of Eric Mikesell)(Engelking, Sandra) (Entered: 10/12/2009)
10/12/2009	<u>18</u>	MEMORANDUM in Opposition re <u>10</u> MOTION to Remand to State Court filed by Cottrell, Inc.. (Attachments: # <u>1</u> Affidavit A - Affidavit of Eric Mikesell, # <u>2</u> Exhibit B)(Lorenz-Moser, Amy) (Entered: 10/12/2009)
10/13/2009	<u>19</u>	ANSWER to Complaint <i>and Affirmative Defenses</i> by United Road Services, Inc..(Engelking, Sandra) (Entered: 10/13/2009)
10/14/2009	<u>20</u>	REPLY to Response to Motion re <u>10</u> MOTION to Remand to State Court filed by Dale Presnell, Lori Presnell. (Maag, Thomas) (Entered: 10/14/2009)
11/19/2009	<u>21</u>	NOTICE TO COUNSEL: The telephone discovery scheduling conference scheduled for November 20, 2009 is CANCELED. Scheduling orders will be issued.Signed by Magistrate Judge Donald G. Wilkerson on 11/19/2009. (klb)THIS TEXT ENTRY IS AN ORDER OF THE COURT. NO FURTHER DOCUMENTATION WILL BE MAILED. (Entered: 11/19/2009)

11/19/2009	<u>22</u>	SCHEDULING ORDER: Discovery due by 5/21/2010. Dispositive Motions due by 6/4/2010. Signed by Magistrate Judge Donald G. Wilkerson on 11/19/2009. (jmp) (Entered: 11/19/2009)
11/19/2009	<u>23</u>	ORDER AND NOTICE OF SETTLEMENT CONFERENCE: Settlement Conference set for 4/21/2010 at 9:00 AM in East St. Louis Courthouse before Magistrate Judge Donald G. Wilkerson.(jmp) (Entered: 11/19/2009)
11/19/2009	<u>24</u>	ORDER REGARDING DISCOVERY. Signed by Magistrate Judge Donald G. Wilkerson on 11/19/2009. (jmp) (Entered: 11/19/2009)
12/07/2009	<u>25</u>	REQUEST for Admissions <i>To All Parties</i> by Dale Presnell, Lori Presnell. (Wendler, Brian) (Entered: 12/07/2009)
12/14/2009	<u>26</u>	MEMORANDUM AND ORDER Denying <u>10</u> MOTION to Remand to State Court filed by Lori Presnell, Dale Presnell. Signed by Judge J. Phil Gilbert on 12/14/09. (bkl) (Entered: 12/14/2009)
12/22/2009	<u>27</u>	AMENDED DOCUMENT by Cottrell, Inc.. Amendment to 2 Notice of Removal <i>Amended Notice of Removal</i> . (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Lorenz-Moser, Amy) (Entered: 12/22/2009)
12/29/2009	<u>28</u>	NOTICE of Appearance by Daniel J. Carpenter on behalf of Cottrell, Inc. (Carpenter, Daniel) (Entered: 12/29/2009)
01/05/2010	<u>29</u>	RESPONSE/ANSWER TO REQUEST FOR ADMISSIONS by United Road Services, Inc.. Related document: <u>25</u> Request for Admissions filed by Lori Presnell, Dale Presnell.(Bricker, Lew) (Entered: 01/05/2010)
01/06/2010	<u>30</u>	RESPONSE/ANSWER TO REQUEST FOR ADMISSIONS by Cottrell, Inc.. Related document: <u>25</u> Request for Admissions filed by Lori Presnell, Dale Presnell.(Carpenter, Daniel) (Entered: 01/06/2010)
01/11/2010	<u>31</u>	NOTICE OF ERRORS AND/OR DEFICIENCIES re <u>30</u> Response/Answer to Request for Admissions filed by Cottrell, Inc.. See attached document for specifics (trb) (Entered: 01/11/2010)
01/12/2010	<u>32</u>	NOTICE of Appearance by Brian M. Wendler on behalf of Dale Presnell, Lori Presnell (Wendler, Brian) (Entered: 01/12/2010)
01/14/2010	<u>33</u>	NOTICE of Appearance by Charles W. Armbruster, III on behalf of Dale Presnell, Lori Presnell (Armbruster, Charles) (Entered: 01/14/2010)
01/20/2010	34 <u>34</u>	MOTION for Extension of Time to Complete Discovery by Dale Presnell, Lori Presnell. (Wendler, Brian) (Entered: 01/20/2010)
02/01/2010	<u>35</u>	NOTICE of Appearance by Daniel J. Carpenter on behalf of Cottrell, Inc. (Carpenter, Daniel) (Entered: 02/01/2010)
02/01/2010	<u>36</u>	NOTICE of Appearance by Theresa M. Lynch on behalf of Cottrell, Inc. (Lynch, Theresa) (Entered: 02/01/2010)
02/02/2010	37 <u>37</u>	MOTION to Withdraw by Cottrell, Inc.. (Lorenz-Moser, Amy) (Entered: 02/02/2010)

02/18/2010	<u>38</u>	REQUEST for Admissions of <i>Medical Records, Bills and Treatment To All Defendants</i> by Dale Presnell, Lori Presnell.(Wendler, Brian) (Entered: 02/18/2010)
02/18/2010	41 <u>39</u>	MOTION for Protective Order <i>and Memorandum in Support</i> by Cottrell, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E)(Carpenter, Daniel) (Entered: 02/18/2010)
02/19/2010	<u>40</u>	NOTICE of Appearance by Amy J. Lorenz-Moser on behalf of Cottrell, Inc. (Lorenz-Moser, Amy) (Entered: 02/19/2010)
02/23/2010	<u>41</u>	MOTION to Reassign Case to <i>Track "C", Extend Deadlines and Suggestions in Support</i> by Cottrell, Inc.. (Carpenter, Daniel) (Entered: 02/23/2010)
02/25/2010	<u>42</u>	NOTICE TO COUNSEL: A telephone discovery conference is set for March 4, 2010 at 4:00 pm before United States Magistrate Judge Donald G. Wilkerson in the East St. Louis Courthouse. Counsel for defendant Cottrell, Inc. will be responsible for initiating the conference call to all parties before calling the Court: 618-482-9004. Signed by Magistrate Judge Donald G. Wilkerson on 2/25/2010. (klb)THIS TEXT ENTRY IS AN ORDER OF THE COURT. NO FURTHER DOCUMENTATION WILL BE MAILED. (Entered: 02/25/2010)
03/01/2010	<u>43</u>	MOTION to Transfer Case <i>Pursuant to Doctrine of Forum Non Conveniens</i> by United Road Services, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M, # <u>14</u> Exhibit N, # <u>15</u> Exhibit O, # <u>16</u> Exhibit P, # <u>17</u> Exhibit Q, # <u>18</u> Exhibit R, # <u>19</u> Exhibit S, # <u>20</u> Exhibit T) (Bricker, Lew) (Entered: 03/01/2010)
03/02/2010	<u>44</u>	RESPONSE in Opposition re <u>39</u> MOTION for Protective Order <i>and Memorandum in Support</i> filed by Dale Presnell, Lori Presnell. (Maag, Thomas) (Entered: 03/02/2010)
03/08/2010	<u>45</u>	ORDER: The final pre-trial conference has been RESET to January 7, 2011, at 9:30 a.m. before United States District Judge J. Phil Gilbert. The jury trial has been RESET to January 18, 2011, before United States District Judge J. Phil Gilbert. An amended scheduling order will be issued. Signed by Magistrate Judge Donald G. Wilkerson on 3/8/2010. (klb)THIS TEXT ENTRY IS AN ORDER OF THE COURT. NO FURTHER DOCUMENTATION WILL BE MAILED. (Entered: 03/08/2010)
03/09/2010	<u>46</u>	NOTICE of Appearance by Randall J. Moore on behalf of United Road Services, Inc. (Moore, Randall) (Entered: 03/09/2010)
03/09/2010	<u>47</u>	REPLY to Response to Motion re <u>39</u> MOTION for Protective Order <i>and Memorandum in Support</i> filed by Cottrell, Inc.. (Lorenz-Moser, Amy) (Entered: 03/09/2010)
03/11/2010	<u>48</u>	RESPONSE/ANSWER TO REQUEST FOR ADMISSIONS by United

		Road Services, Inc.. Related document: <u>38</u> Request for Admissions filed by Lori Presnell, Dale Presnell.(Bricker, Lew) (Entered: 03/11/2010)
03/15/2010	<u>49</u>	JOINDER by Cottrell, Inc.. Joinder in <u>43</u> MOTION to Transfer Case Pursuant to Doctrine of Forum Non Conveniens. (Lynch, Theresa) (Entered: 03/15/2010)
03/15/2010	<u>50</u>	ORDER: During the discovery dispute conference held on March 4, 2010, plaintiffs' counsel advised the Court plaintiffs were considering consenting to defendant United Road Services Inc.'s motion to transfer the case. The Court continued the discovery dispute conference to March 16, 2010. Defendant Cottrell, Inc. has now joined in the pending motion to transfer and plaintiffs' counsel advised the Court they will respond to that motion. The Court hereby CANCELS the discovery dispute conference set for March 16, 2010, and will reset it in a separate order if necessary. Signed by Magistrate Judge Donald G. Wilkerson on 3/15/2010. (klb) THIS TEXT ENTRY IS AN ORDER OF THE COURT. NO FURTHER DOCUMENTATION WILL BE MAILED. (Entered: 03/15/2010)
03/15/2010	<u>51</u>	RESPONSE to Motion re <u>43</u> MOTION to Transfer Case Pursuant to Doctrine of Forum Non Conveniens filed by Dale Presnell, Lori Presnell. (Attachments: # <u>1</u> Exhibit A)(Maag, Thomas) (Entered: 03/15/2010)
03/23/2010	<u>52</u>	RESPONSE/ANSWER TO REQUEST FOR ADMISSIONS by Cottrell, Inc.. Related document: <u>38</u> Request for Admissions filed by Lori Presnell, Dale Presnell.(Lynch, Theresa) (Entered: 03/23/2010)
03/23/2010	51 <u>53</u>	MOTION for Extension of Time to Complete Discovery by Dale Presnell, Lori Presnell. (Maag, Thomas) (Entered: 03/23/2010)
03/26/2010	<u>54</u>	REPLY to Response to Motion re <u>43</u> MOTION to Transfer Case Pursuant to Doctrine of Forum Non Conveniens filed by United Road Services, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Engelking, Sandra) (Entered: 03/26/2010)
03/29/2010	<u>55</u>	NOTICE OF ERRORS AND/OR DEFICIENCIES re <u>54</u> Reply to Response to Motion filed by United Road Services, Inc. See attached document for specifics. (bkl) (Entered: 03/29/2010)
04/14/2010	<u>56</u>	NOTICE TO COUNSEL: The settlement conference set for April 21, 2010, is hereby CANCELED. Signed by Magistrate Judge Donald G. Wilkerson on 4/14/2010. (klb) THIS TEXT ENTRY IS AN ORDER OF THE COURT. NO FURTHER DOCUMENTATION WILL BE MAILED. (Entered: 04/14/2010)
04/28/2010	<u>57</u>	MEMORANDUM AND ORDER Granting <u>43</u> MOTION to Transfer Case Pursuant to Doctrine of Forum Non Conveniens filed by United Road Services, Inc. ORDER TRANSFERRING CASE TO OTHER DISTRICT: Case transferred to Eastern District of Michigan. Signed by Judge J. Phil Gilbert on 4/28/10. (bkl) (Entered: 04/28/2010)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

NANCY J. ROSENSTENGEL
Clerk of Court

750 Missouri Avenue
P. O. Box 249
East St. Louis, Illinois 62202
(618) 482-9371

301 West Main
Benton, Illinois 62812
(618) 439-7760

Reply to: Benton

April 28, 2010

Theodore Levin, Clerk
U. S. District Court
for Eastern District of Michigan
231 West Lafayette Boulevard, 5th Floor
Detroit, MI 48226

Case: 2:10-cv-11991
Judge: Cook, Julian Abele
MJ: Morgan, Virginia M
Filed: 05-18-2010 At 09:38 AM
TRANS DALE PRESNELL, ET AL V COTTRELL, INC, ET AL (CJG)

RE: Presnell, et al. v. Cottrell, Inc., et al.
Civil Case No. 09-656-JPG

Dear Clerk:

On 4/28/10, an Order by the Honorable J. Phil Gilbert, U. S. District Judge, was entered transferring the above-mentioned case from this District Court to the U. S. District Court, Eastern District of Michigan.

Enclosed is a certified copy of the docket sheet. This court is using the electronic case filing system. You may access our electronic case file at the following web address: <http://ecf.ilsd.uscourts.gov> to obtain documents. We have assigned a login and password for district courts to use in accessing this information. The login is "guestilsd" and the password is "guest01". This login and password should not be shared with anyone other than federal court personnel who would have a need to access our electronic case file system. You will need Adobe Acrobat Reader loaded on your computer in order to view the documents.

Please acknowledge receipt of the docket sheet by returning a signed copy of this letter.

Sincerely,

NANCY J. ROSENSTENGEL, CLERK

By: s/Brenda K. Lowe, Deputy Clerk

Receipt Acknowledged on: 5/18/10
By: *Carol Shefferd*

Enclosures